SI TOH FOK TIAK trading as CHOP WING LOONG v. CHOP SWEE KEE & CO.

[A. C. J. (Abbott, J.) February 20, 1953]

[Malacca — Civil Appeal No. 3 of 1952]

Evidence — Leave to adduce fresh evidence — Principle on which leave refused.

The principle on which leave to adduce fresh evidence must be refused is where, at the trial, it could have been produced with the exercise of proper diligence. In this case the application to adduce fresh evidence is granted. Fresh trial ordered.

APPLICATION.

C. S. Jayaswal for the appellant.

W. H. Sault for the respondents.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — This is an application, preliminary to the argument of the appeal, for leave to adduce fresh evidence.

The plaintiff (the appellant) sued the defendant firm (the respondents) for a sum of money alleged to be due in respect of sewing machines. It was the case for the defendant firm that the sewing machines had been sold to one Hong Boon Pin, who was the manager of the defendant firm, in his personal capacity — that the transaction was not part of the defendant firm's business. Hong Boon Pin gave evidence for the defence and said that the defendant firm was not a party to the sale. The President of the Sessions Court in Malacca accepted the defence and gave judgment against the plaintiff.

The application for leave to adduce fresh evidence, one witness, is supported by affidavit — "It was never anticipated that the evidence of Ismail Hassan could be forthcoming in the lower court". There is an affidavit sworn by Ismail Hassan which, if true, shows that, at the material time he, as a customer of the defendant firm, bought a sewing machine and was given a receipt on a paper bearing the defendant firm's name and address in print upon it and also bearing the defendant firm's name on a rubber stamp. This, if true, might well seem to show that the defendant firm was dealing with this sewing machine in the ordinary course of its business.

The principle upon which leave to adduce fresh evidence must be refused is where, at the trial, it could have been produced with the exercise of proper diligence. (*Annual Practice*, 1952, page 1252). In this case, it is quite clear that the existence of such evidence was unknown otherwise it certainly would have been called. It would certainly have required something more than proper diligence to have discovered it. I hold that the application must succeed.

The next question is how best the matter should proceed from here. I do not consider that the case is one which could best be determined in this Court either upon affidavits or upon oral evidence. There was an attack upon the credibility of witnesses whose evidence has already been heard. To determine the case here would be to try the case piecemeal. The proper course is to order a fresh trial and this I do. At the same time I order that the costs of the whole case up to and including to-day shall be awarded to the successful party in the fresh proceedings.

Fresh trial ordered.

PUBLIC PROSECUTOR v. NGOW KENG JEE.

[A. Cr. J. (Abbott, J.) December 3, 1952]

[Malacca — Criminal Appeal No. 20 of 1952]

Emergency (Registration Areas) Regulations, 1948, regs. 11 and 18(2) — Identity Card — Erasure of entry made by person without authority.

This case disposes of the question whether a holder of an identity card who had erased an entry on it which had been entered by a person without authority to enter it, can be guilty of an offence under regulation 18(2) of the Emergency (Registration Areas) Regulations 1948.

Held: under regulation 11 no person may make any erasure in an identity card except a Registration Officer or his duly appointed agent, and it therefore makes no difference whether the entry which had been erased was made by a person with or without authority.

CRIMINAL APPEAL.

D. C. Jackson (D.P.P.) for the Public Prosecutor.

C. S. Jayaswal for the respondent.

Abbott, J. : — The respondent was charged with knowingly having in his possession an identity card containing an unauthorised erasure contrary to regulation 18(2) of the Emergency (Registration Areas) Regulations, 1948. This Court has seen the identity card and it is quite clear that a certain area of it had been roughly rubbed out. There was evidence in the lower court that the entry that was erased was an entry made by the then Chief Police Officer to the effect that the respondent had been a detainee. The learned President acquitted the respondent because he held, and rightly held, that the entry which had been made upon the identity card was made wrongly and without lawful authority. It is not necessary, for the purposes of this judgment, to go into that. But the learned President held that since the entry had been made by a person without authority to make

it that the respondent did not require any authority to erase it. In the opinion of this Court that was a misconception of the law. By the provisions of regulation 11 no person may make any erasure in or on an identity card except a Registration Officer or an agent duly appointed by him. It makes no difference by whom the entry was made, whether made with or without authority, no person other than a Registration Officer or his agent may erase it. In the view of this Court the learned President should have convicted. Since the learned Deputy Public Prosecutor has asked this Court merely to give a declaratory judgment on the law, I do not propose to make any order upon conviction.

No order.

TAN TUCK LOCK v. R.

[A. Cr. J. (Gordon-Smith, Ag. C.J.) February 22, 1949]

[Singapore — Magistrate's Appeal No. 199 of 1948]

Gaming — Betting Ordinance — Bookmaker — Evidence of expert.

The appellant and another person were charged for carrying on the business of a bookmaker at the Singapore Turf Club on the 10th July 1948. The evidence against the two accused was that one of them would come up to the other and whisper to him from time to time during the races and they were seen to make entries in their respective Race Books. The only other evidence was that of A.S.P. Mr. Minns who claimed to be an expert and based his evidence on his interpretation of the entries made by the accused in their respective race books.

Held: there was no factual evidence against either of the accused and therefore it was not only unsafe to convict them but they should not have been called on for their defence.

MAGISTRATE'S APPEAL.

Philip Hoalim for the appellant.

A. V. Winslow (Crown Counsel) for the Crown.

Cur. Adv. Vult.

Gordon-Smith, Ag. C.J. : — (1) Tang Tuck Lock and (2) Ow Chor Sang had been charged and tried before the Magistrate for carrying on the business of bookmakers at the Singapore Turf Club on the 10th July 1948.

The Magistrate convicted the 1st accused and acquitted the 2nd accused on the 27th August, his reasons for so doing being contained in his recorded Judgment under date 3rd January 1949.

The appeal was heard by me on the 11th February at the conclusion of which I quashed the conviction also, of the 1st accused, the appellant.

My reasons for doing so were that, in my opinion there was quite insufficient evidence to support the conviction.

The only witnesses for the Prosecution were two Police Officers, A.S.P. Eu Cheow Eang and A.S.P. F. G. M. Minns, and a Turf Club Clerk.

The only evidence by the former A.S.P. was that he arrested the two accused on his suspicions being aroused because one would come up to the other and whisper to him from time to time during the first six races, and that they were seen to make entries in their respective Race Books. He took possession of these 2 Books and searched them both.

Mr. Minns' evidence is entirely theoretical and based on numbers and hieroglyphics found in these Race Books, in the spaces provided for making such entries.

The only other witness was a clerk employed in the Turf Club and his evidence was quite inconclusive as to whether the appellant was or was not a member of the Turf Club.

There was no evidence of any person placing any bets with the accused or of any money passing or of any person communicating with No. 1 accused, except No. 2 accused. The only evidence was that No. 2 accused would come up and whisper to him.

The only other evidence therefore was that of Mr. Minns based on his interpretation of the entries made by the accused in their respective Race Books, which are supplied by the Turf Club.

I do not propose to analyse the reasons given by the learned Magistrate for convicting the one and acquitting the other accused but I agree with some of the opinions expressed by him particularly in para (3) as follows :—

"All these things by themselves were nothing but matters arousing strong suspicion. Taken in conjunction with the markings in the book, however, and the expert's opinion on them, they built up into a formidable case against one of the two accused, at least."

I would add, if not the one, why not the other. They were either both guilty or both innocent.

There was no real factual evidence against either of them only Mr. Minns' interpretation and in the absence of factual evidence in addition it was quite unsafe to convict the accused.

Anybody who tries to obtain some tip or exclusive evidence as to possible or probable winners in a race and records such information in his own race book in a way which would not be obvious to others — would be liable to conviction, and there are hundreds of such people who probably do so. In my opinion the evidence was such that not only was it unsafe to convict the accused but they should not have been called on for their defence.

Conviction quashed.